

1 **Tim Eblen, Oregon Bar No. 050252**

2 Trial Attorney for Plaintiff

3 Eblen Freed LLP

4 1040 NE 44<sup>th</sup> Ave. Suite 4

5 Portland, Oregon 97213

6 [tim@eblenfreed.com](mailto:tim@eblenfreed.com)

7 Phone 503-548-6330

8 Fax 503-548-6333

9 **Michelle Freed, Oregon Bar No. 042880**

10 **James Tschudy, Oregon Bar No. 141956**

11 Of Attorneys for Plaintiff

12 Eblen Freed LLP

13 UNITED STATES DISTRICT COURT

14 FOR THE DISTRICT OF OREGON

15 EUGENE DIVISION

16 **DIANA MARIE ROBBINS, a.k.a. DIANA**  
17 **MARIE AUSTIN,**

18 a consumer residing in Linn County,

19 Plaintiff,

20 v.

21 **COLUMBIA COLLECTION SERVICE,**  
22 **INC., et al.,**

23 Defendants.

Case No. 15-cv-00821-AA

**MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S STATEMENT OF  
ATTORNEY FEES AND COSTS**

24 This brief complies with the applicable word-count limitation under LR 7-2(b), 26-3(b),  
25 54-1(c), or 54-3(e) because it contains 2171 words, including headings, footnotes, and  
26 quotations, but excluding the caption, table of contents, table of cases and authorities, signature  
block, exhibits, and any certificates of counsel.

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## INTRODUCTION

Plaintiff, Ms. Robbins asserted claims against Defendant Columbia Collection Service Inc. (Columbia), under the Fair Debt Collection Practices Act (FDCPA), and against Providence Health and Services, Oregon (Providence) under Oregon's Unfair Trade Practices Act. Plaintiff accepted an Offer of Judgment from Columbia, which acted to fully resolve the case for both Defendants.

## ARGUMENT

### I. PLAINTIFF IS ENTITLED TO AN AWARD OF HER ATTORNEY FEES UNDER THE FDCPA

The FDCPA provides that in a successful action to enforce the FDCPA, a debt collector will be liable to the consumer for the "the costs of the action, together with a reasonable attorney's fee as determined by the court." 15 U.S.C. § 1692(k)(3). The FDCPA provides that a prevailing consumer shall recover her attorney fees and costs in order to encourage consumers to act as private attorneys general in order to enforce the public policy goals of the FDCPA. 15 U.S.C. § 1692 (k); *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973 (9<sup>th</sup> Cir. 2008), *citing Tolentino v. Friedman*, 46 F.3d 645, 651 (7<sup>th</sup> Cir. 1995).

### II. LODESTAR/MULTIPLIER APPROACH.

The Ninth Circuit has adopted a lodestar/multiplier approach for assessing the amount of reasonable attorney fees. *D'Emanuele v. Montgomery Ward & Co., Inc.*, 904 F.2d 1379, 1383 (9<sup>th</sup> Cir. 1990), *citing Hensley v. Eckerhart*, 461 U.S. 424, 433, 434 n.9, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983). The lodestar/multiplier analysis has two parts. The Court first calculates the lodestar amount by multiplying the number of hours the prevailing party reasonably expended on

the litigation by a reasonable hourly rate. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996). This methodology results in a “presumptively reasonable” fee award. *Id.*

Second, the Court may consider the following factors which may result in a deviation from the presumptively reasonable lodestar amount: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Kerr v. Screen Guild Extras, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975).

After determining the lodestar amount, the court assesses whether to adjust the lodestar upward or downward based on the *Kerr* factors that are “not already subsumed in the initial calculation of the lodestar.” *Morales*, 96 F.3d at 363-64.

The lodestar fee is \$14,817.50. This is based on the time expended by Plaintiff’s attorneys Tim L. Eblen, Michelle K. Freed, James Tschudy and their paralegal.

	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Tim L. Eblen	26.3	\$340	\$ 8,942.00
Michelle K. Freed	4.8	\$340	\$ 1,632.00
James Tschudy	16.1	\$250	\$ 4,025.00
Paralegal	1.9	\$115	\$ 218.50
TOTAL	42.9		\$14,817.50

1           III.     HOURLY RATE

2           The appropriate hourly rate is that rate which is charged by attorneys of similar skill and  
3 experience for comparable legal services in the community. *Blum v. Stenson*, 465 U.S. 886, 893-  
4 896, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984). Evidence of the prevailing market rate can be shown  
5 through affidavit of the prevailing party's attorneys as well as through testimony of other  
6 attorneys. *Id.*

7  
8           Tim L. Eblen. Tim L. Eblen's hourly rate is \$340.00. Early in 2014, The Honorable  
9 Thomas Ryan, an Oregon Circuit Court Judge, awarded me the hourly rate of \$340. Also in  
10 2014, The Honorable Karin J. Immergut, an Oregon Circuit Court Judge, awarded me the hourly  
11 rate of \$315. The 2012 OSB economic survey indicates that hourly rates for Portland attorneys  
12 in practice 10-12 years range from a median of \$275 to a 95th percentile of \$428. Applying a  
13 2.0 percent annual increase of those rates for inflation reflects a median of \$291 and a 95<sup>th</sup>  
14 percentile of \$454. Declaration of Tim Eblen ¶ 8.

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16           Tim L. Eblen began working in civil litigation as a law clerk in 2002. He passed the bar  
17 examination in 2004 and he was admitted to the Oregon State Bar in 2005. For the past 9 years,  
18 he has specialized in the fields of debtor-creditor and consumer law. Mr. Eblen is a member of  
19 the Oregon State Bar, Debtor-Creditor Section, including the Debtor-Creditor legislative  
20 committee. He is a member of the Oregon Trial Lawyers Association Consumer law section.  
21 He has been asked to speak at multiple Continuing Legal Education seminars on debtor-creditor  
22 issues, and regularly presents on debt settlement options for the public. He has also authored  
23 articles for the Washington State Bar Association Debtor Rights Newsletter, the Oregon State  
24 Bar Debtor Creditor Section Newsletter, and for Trial Lawyer, a publication produced by the  
25 Oregon Trial Lawyers Association. Declaration of Tim L. Eblen, ¶¶ 7, 9, 11, 12. Mr. Eblen is  
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1 well respected in the community and is known for his work on debtor/creditor matters.

2 Declaration of Quinn Kuranz ¶¶ 6-7; Declaration of Michael Fuller ¶ 6-7; Declaration of Justin  
3 Baxter ¶ 5; Declaration of Jeffery Mutnick ¶ 6-12.

4 Before opening his firm in 2011, Mr. Eblen worked at a creditor's rights law firm. There  
5 he gained extensive knowledge of the FDCPA, and served as the compliance trainer for a staff of  
6 approximately 25 employees. In that role, he gave individualized and group trainings on a  
7 regular basis to insure compliance with the Act. Declaration of Tim L. Eblen, ¶ 10.

9 Michelle K. Freed. Michelle K. Freed's hourly rate is \$340.00. Declaration of Michelle  
10 K. Freed, ¶ 2. The 2012 OSB economic survey indicates that hourly rates for Portland attorneys  
11 in practice 10-12 years range from a median of \$275 to a 95th percentile of \$428. Applying a  
12 2.0 percent annual increase of those rates for inflation reflects a median of \$291 and a 95<sup>th</sup>  
13 percentile of \$454. In 2014, The Honorable Judge Immergut, an Oregon Circuit Court Judge  
14 awarded Ms. Freed the hourly rate of \$315. Declaration of Michelle K. Freed, ¶ 3.

16 Michelle K. Freed was admitted to the Oregon State Bar in 2004. Her career has focused  
17 exclusively on debtor-creditor and consumer law. Ms. Freed has been asked to speak at multiple  
18 Continuing Legal Education seminars on debtor-creditor issues, and regularly presents on debt  
19 settlement options for the public. She has twice co-authored a chapter on bankruptcy  
20 implications in family law for the Oregon State Bar, and has written for Trial Lawyer, a  
21 publication produced by the Oregon Trial Lawyers Association. She is the current co-chair for  
22 the Oregon Trial Lawyers Association Consumer Section. Declaration of Michelle K. Freed ¶¶ 4-  
23 8. Ms. Freed is well respected in the community and is known for her work on a debtor/creditor  
24 matters. Declaration of Quinn Kuranz ¶¶ 6-7; Declaration of Michael Fuller ¶ 6-7; Declaration  
25 of Justin Baxter ¶ 5.  
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1 James R. Tschudy: James R. Tschudy's hourly rate is \$250.00. Declaration of James R.  
 2 Tschudy, ¶ 2. Mr. Tschudy was admitted to the Arizona State Bar in 2009, and the Oregon State  
 3 Bar in 2014. Declaration of James R. Tschudy, ¶ 3. The 2012 OSB economic survey indicates  
 4 that hourly rates for Portland attorneys in practice 4-6 years range from a median of \$218 to a  
 5 95th percentile of \$295. Applying a 2.0 percent annual increase of those rates for inflation  
 6 reflects a median of \$231 and a 95<sup>th</sup> percentile of \$313. Declaration of James R. Tschudy, ¶ 5.

7  
 8 Mr. Tschudy's career has been focused primarily on debtor-creditor issues including  
 9 bankruptcy and consumer law. Declaration of James R. Tschudy, ¶ 4.

#### 10 IV. THE *KERR* FACTORS RELEVANT TO THIS CASE.

##### 11 A. The Time and Labor Required.

12 Plaintiff's counsel spent a total of 49.1 hours to prosecute her claim to a successful  
 13 resolution. This time includes approximately 5.5 hours specifically incurred in enforcing the  
 14 discovery deadline that Columbia's counsel sought unsuccessfully to extend.

##### 15 B. The Skill Required.

16  
 17 There are few experienced consumer law attorneys that are willing to represent a client in a  
 18 unlawful debt collection case such as this. These cases are less desirable for attorneys in practice  
 19 considering that the damages awarded in the vast majority of FDCPA lawsuits is low, and the  
 20 fact that all payment is contingent. Declaration of Justin Baxter ¶ 6. Plaintiff's counsel have  
 21 demonstrated that they have specialized skill in the field of debtor-creditor and consumer law.  
 22 Declaration of Tim L. Eblen, ¶¶ 7-12; Declaration of Justin Baxter ¶5; Declaration of Quinn  
 23 Kuranz ¶¶ 6-7; Declaration of Jeffery Mutnick ¶ 9-12; Declaration of Michael Fuller ¶ 6-7;  
 24 Declaration of Michelle K. Freed ¶¶ 4-8. Plaintiff's counsel understands the complex provisions  
 25 of the FDCPA and recognizes non-compliance. Declaration of Justin Baxter ¶5; Declaration of  
 26

1 Tim L. Eblen, ¶ 10; Declaration of Michelle K. Freed ¶ 5. In addition, Plaintiff's counsel  
 2 understands the workings of collection agencies including the typical procedures and policies to  
 3 insure compliance with the FDCPA, and therefore can recognize when an agency lacks adequate  
 4 procedures designed to prevent non-compliance. *Id.*

5  
 6 C. The Customary Fee.

7 The customary fee in FDCPA cases is a contingent fee based on a percentage of the total  
 8 recovery, or the amount of fees awarded by the court under the fee-shifting section of the  
 9 FDCPA.

10 D. Whether the Fee Is Fixed or Contingent.

11 Plaintiff's attorneys accepted Defendant's case on a contingent fee basis. Declaration of  
 12 Tim L. Eblen, ¶4. Plaintiff's counsel took a great risk to represent Plaintiff. When the fee is  
 13 contingent, the fee award should compensate counsel for the risk of receiving no compensation.  
 14 See, e.g., *Blum v. Stenson*, 465 U.S. 886, 903, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984)  
 15 (Brennan, J., concurring); *Fabri v. United Techs Int'l, Inc.*, 193 F. Supp. 2d 480, 486 (D. Conn.  
 16 2002). (“[C]ounsel who successfully undertake the cases for a contingency fee are generally  
 17 compensated at rates greatly exceeding standard billing rates for general legal services.”).  
 18 Moreover, the fee award should permit counsel “to earn an income that would be competitive  
 19 with colleagues who get paid win or lose.” *Bayless v. Irv Leopold Imports, Inc.*, 659 F. Supp.  
 20 942, 944 (D. Or. 1987), citing *Blum*, 465 U.S. at 903.

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 22 E. The Amount Involved and the Results Obtained.

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 24 Counsel for the Plaintiff filed the present case on May 13, 2015. Plaintiff had a clear cause  
 25 of action, however when the damages began accruing was known only to the Defendants. Plaintiff  
 26 prevailed on the only motion practice involved in this case, compelling Defendants to provide her

1 with discovery necessary to evaluate her damages. Ultimately, judgment was entered against  
 2 Providence for an amount satisfactory to the Plaintiff to compensate her for the Defendants'  
 3 wrongful acts. Plaintiff's counsel obtained favorable results while working efficiently towards that  
 4 end.

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 6 F. The Experience, Reputation, and Ability of the Attorneys.

7 Plaintiff's attorneys are experienced and known for their work in the debtor-creditor field and  
 8 for their work in consumer protection. Declarations of Quinn Kuranz ¶¶ 6-7; Declaration of  
 9 Michael Fuller ¶ 6-7; Declaration of Justin Baxter ¶ 5; Declaration of Jeffery Mutnick ¶¶ 9-12.  
 10 Plaintiff's counsel understands the complex provisions of the FDCPA and recognizes non-  
 11 compliance. Declaration of Tim L. Eblen, ¶ 10; Declaration of Michelle K. Freed ¶ 5;  
 12 Declaration of Justin Baxter ¶ 5. In addition, Plaintiff's counsel understands the workings of  
 13 collection agencies including the typical procedures and policies to insure compliance with the  
 14 FDCPA, and therefore can recognize when an agency lacks adequate procedures designed to  
 15 prevent non-compliance. *Id.*

16  
 17 V. PLAINTIFF IS ENTITLED TO RECOVERY OF HER COSTS

18 Pursuant to Fed. R. Civ. P. 54, Plaintiff is entitled to recover her costs. Those costs total  
 19 \$495, and are comprised of a filing fee of \$400, service fees of \$45 and \$50 for Columbia and  
 20 Providence respectively. Declaration of Tim L Eblen 13.

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1 VI. PLAINTIFF IS ENTITLED TO RECOVER ADDITIONAL FEES

2 Plaintiff is entitled to recover her fees incurred in preparing and presenting her fee  
3 application. *Mares v. Credit Bureau of Raton*, 801 F.2d 1197, 1206 (10<sup>th</sup> Cir. 1986).  
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5 DATED: September 30, 2015

6 EBLEN FREED, LLP

7  
8 /s/ Tim L. Eblen

9 TIM L. EBLEN, OSB#050252

10 Of Attorneys for Plaintiff  
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